

Exhibit C

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COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
INDEPENDENT ASSET MANAGEMENT LLC and OLA
HOLMSTROM,

Plaintiffs,

-against-

DANIEL ZANGER,

Defendant.

-----X
225 Broadway
New York, New York

March 21, 2008
9:56 a.m.

EXAMINATION BEFORE TRIAL of
DANIEL ZANGER, the Defendant herein, taken by
the Plaintiffs, pursuant to a Notice, and held
at the above-noted time and place, before
David Sheldon, RPR, a Notary Public of the
State of New York.

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A P P E A R A N C E S:

LAW OFFICE OF JOHN BALESTRIERE, P.L.L.C.
Attorney for the Plaintiffs
225 Broadway
Suite 2700
New York, New York 10007

BY: CRAIG STUART LANZA, ESQ.
BY: WILLIAM HOLLEMAN, ESQ.

LAW OFFICES OF JONES DAY, ESQS.
Attorneys for the Defendant
222 East 41st Street
New York, New York 10017

BY: THOMAS H. SEAR, ESQ.

ALSO PRESENT:
GEORGE SZELE

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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties hereto, that the sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

IT IS FURTHER STIPULATED AND AGREED that counsel representing the witness examined herein shall be furnished with a copy of the within deposition without charge.

1

4

2 D A N I E L Z A N G E R, the Defendant
3 herein, after having first been duly sworn by
4 David Sheldon, RPR, a Notary Public in and for
5 the State of New York, was examined and
6 testified under oath as follows:

7 EXAMINATION BY

8 MR. LANZA:

9 Q State your name for the record,
10 please.

11 A Daniel Zanger.

12 Q State your address for the record,
13 please.

14 A 4779 Collins Avenue, Number 903,
15 Miami Beach, Florida, 33140.

16 MR. LANZA: The time is 9:57.

17 Mr. Zanger, I am going to ask you
18 a series of questions. I ask you to
19 just allow me to finish the question
20 before you answer it.

21 If you need time to talk to your
22 attorney, just let me know and I will,
23 of course, give you that time. The only
24 thing that I ask is that you give me an
25 answer to the question that is asked

1

ZANGER

5

2

prior to talking to your attorney.

3

Q In October of 2004, you signed an

4

agreement with Independent Asset Management;

5

is that correct?

6

A I believe it is.

7

Q Why did you enter into that

8

agreement?

9

A Well, I was under the impression

10

that Independent Asset Management was going to

11

in turn raise two hundred million dollars for

12

me.

13

Q And did you speak with Independent

14

Asset Management? I will refer to them as IAM

15

from hereon in. Did you speak to any

16

principal of IAM?

17

A George Szele.

18

Q When you spoke to George Szele,

19

did he indicate his motivation for entering

20

into the agreement?

21

A Yes.

22

Q What did he say?

23

A He basically said that with my

24

trading record, which he heard was phenomnal,

25

that he could raise two hundred and that I

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would get 15 percent of the profits and he

3

would get 5 percent.

4

Q Whose idea was it initially to

5

enter into the agreement?

6

MR. SEAR: Objection to the form.

7

MR. LANZA: I will rephrase the

8

question.

9

Q Prior to signing the agreement

10

when you first met George Szele, did you

11

approach him or did he approach you?

12

A He approached me.

13

MR. SEAR: Objection to the form.

14

Go ahead.

15

A He approached me.

16

Q When he approached you, what did

17

he say?

18

MR. SEAR: Objection to the form.

19

A He said that with my trading

20

record, he could raise two hundred million

21

dollars.

22

Q How did you meet George Szele?

23

A He called me out of the blue one

24

day.

25

Q When he called you, when you spoke

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on the phone, did he indicate to you how he

3

got your information?

4

A From a friend of mine.

5

Q Who was that?

6

A Bryce James.

7

Q Did Bryce James tell you first

8

that George Szele would be calling you?

9

A I don't remember that.

10

Q Around what time did these

11

conversations take place?

12

A Boy, I couldn't nail it down

13

precisely, to tell you the truth. Before the

14

contract was signed.

15

Q Can you give us a year?

16

A 2004.

17

Q And in 2004, you had a domestic

18

hedge fund; is that correct?

19

A Yes.

20

Q What was the name of that fund?

21

A Westwood Capital.

22

Q And you did not at that time have

23

an offshore hedge fund; is that correct?

24

A That's correct.

25

Q Would you say it is common in the

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hedge fund family to have a domestic and

3

offshore hedge fund?

4

A That I couldn't answer.

5

Q If you had an offshore fund in

6

addition to a domestic fund, would it help you

7

to attract investors to the domestic fund?

8

A I couldn't say that it could.

9

Q Well, can you say the Independent

10

Funds Limited helped you to attract any

11

investors to Westwood?

12

A None that I know of.

13

Q Just to be clear, there was never

14

an occasion in which somebody had looked at

15

the Independent Funds Limited first and had

16

ended up in Westwood Capital Partners?

17

A None that I'm aware of.

18

MR. LANZA: At this time, I will

19

now show you a document.

20

Let's have this marked as IAM's

21

Exhibit 1.

22

(Whereupon, a document was marked

23

as IAM's Exhibit 1 for identification as

24

of this date by the Reporter.)

25

Q I have just handed you a document

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that was marked as IAM's Exhibit 1 (handing).

3

Do you recognize that document?

4

MR. SEAR: I object to the form.

5

I mean, the exhibit is a fairly

6

voluminous document and I'm not sure if

7

you are asking the witness if he

8

recognizes the pages or just the pages

9

generally. Answer it as best that you

10

can. I'm not blocking the inquiry.

11

MR. LANZA: Sure.

12

A Well, it resembles from the front

13

page, the front page resembles what I have

14

seen previously, but I can't say for sure that

15

it is the exact document that was presented to

16

me.

17

Q By the exact document that was

18

presented to you, are you referring to the

19

Independent Funds Limited confidential

20

offering memorandum?

21

A I am making reference to the

22

Independent Funds confidential offering

23

memorandum. I am basically saying this

24

particular page here (indicating), this front

25

page looks similar, but I can't say factually

1

ZANGER

10

2

that it was what was presented to me.

3

Q But can you explain to us, you are

4

familiar with what an offering memorandum is

5

for an offshore hedge fund, is that correct,

6

in general?

7

A Well, I understand the concept.

8

Q What do you understand that

9

concept to be?

10

A That there's an outline and it is

11

basically an outline.

12

Q Explain what you mean.

13

A Well, it is an outline of the

14

offering.

15

Q If you can just sort of flesh that

16

out. What do you mean by "outline"?

17

A It gives you the parameters of the

18

offering.

19

Q Do you understand it to have any

20

legal significance?

21

A Yes.

22

Q And in your experience, most hedge

23

funds have offering memorandums; is that

24

correct?

25

A Yes.

1

ZANGER

11

2

Q Do these go out to potential

3

investors?

4

A Yes.

5

Q I would like you to turn to page 7

6

of the document.

7

A (Witness complies.)

8

Q Do you see where it says, "The

9

trading manager"?

10

A Okay.

11

Q Have you read that, Mr. Zanger?

12

Did you read it just now?

13

MR. SEAR: What do you mean by

14

"it"?

15

MR. LANZA: The paragraph where it

16

says, "The trading manager," the words

17

"trading manager" on the left-hand side,

18

but there is a paragraph to the right of

19

it that begins with "the fund" and it

20

ends with "dissolve."

21

A Okay.

22

Q Is it safe to say that that

23

paragraph in sum and substance says that IAM

24

according to this document is the trading

25

manager for Independent Funds Limited?

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MR. SEAR: Objection to the form.

3

Answer it if you can.

4

A Do you want to restate the

5

question?

6

Q Sure. According to this document,

7

and according to what you just read, is

8

Independent Asset Management the trading

9

manager of the Independent Funds Limited?

10

A Well, I would have to say that it

11

doesn't deny it.

12

Q So let's move onto page 17.

13

A Okay.

14

Q There is a paragraph there that

15

says, "Risk control."

16

A Uh-huh.

17

Q Can you read that whole paragraph

18

to yourself? You don't need to read it out

19

loud.

20

A Okay.

21

Q Now, you traded for the

22

Independent Funds Limited; correct?

23

MR. SEAR: Objection to the form.

24

Answer it.

25

A Yes.

1

ZANGER

13

2

Q Now, according to what you just

3

read, isn't it true that Independent Asset

4

Management had a duty to continually monitor

5

your positions as a trader?

6

MR. SEAR: Objection to the form.

7

A Can you repeat that again?

8

Q You just read a paragraph that

9

indicates, "Risk control"; is that correct?

10

A Uh-huh.

11

Q According to that, Independent

12

Asset Management had a duty to monitor your

13

positions as a trader; is that correct?

14

MR. SEAR: Objection to the form.

15

A Well, I don't see in here where it

16

says that Independent Asset will monitor.

17

Q Well, let me ask you this: Do you

18

know what a stop loss level is?

19

A The question, as I understand it,

20

you asked me if the Independent Asset would

21

monitor.

22

MR. SEAR: He is asking you a

23

different question.

24

Q I'm asking a different question.

25

Do you know what a stop loss

1

ZANGER

14

2

level is?

3

A Yes, I know.

4

Q Can you explain what that means?

5

A It means when a stock hits a

6

certain level, the asset will be sold.

7

Q Do you see that sentence there

8

under risk control, it begins with fourth?

9

A Yes.

10

Q Can you read that out loud?

11

A "Fourth, proper exit points or

12

stop loss levels are continuously identified

13

and closely monitored."

14

Q And that sentence is referring to

15

the trading manager, isn't that correct, are

16

monitored by the trading manager?

17

MR. SEAR: Objection to the form.

18

A Yes.

19

Q So isn't it saying here that the

20

trading manager had a duty to monitor stop

21

loss limits on your trading?

22

MR. SEAR: Just note my objection

23

to this line. You can answer it.

24

Asking him to interpret the legal

25

significance of this paragraph having

1

ZANGER

15

2

read it, there is no reference to him.

3

Answer it as best that you can, but I

4

think the whole line is improper.

5

A Can you repeat the question?

6

Q Okay. According to what you read

7

here, isn't that saying that the trading

8

manager, namely IAM, had a duty to

9

continuously monitor, identify stop loss

10

levels; is that correct?

11

MR. SEAR: Objection to the form.

12

A Just repeat the same question.

13

Q Does what you read indicate that

14

IAM had a duty to monitor stop loss levels?

15

MR. SEAR: Just note my objection

16

to the form.

17

A IAM?

18

Q That's correct, IAM.

19

A It says here that they are

20

continuously identified and closely monitored.

21

Q You traded for Independent Funds

22

Limited?

23

A I did.

24

Q So wouldn't IAM have a duty to

25

monitor your stop loss levels?

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MR. SEAR: Just note my objection

3

to the form.

4

A Well, as I read it, it says, "The

5

trading manager will attempt stop losses."

6

Q Will monitor; is that correct?

7

A Yes.

8

Q And the trading manager is IAM?

9

A The trading manager? The trading

10

manager -- I can't see where it says that IAM

11

will or will not.

12

Q Okay. I will move on.

13

You entered into an agreement

14

with IAM; is that correct?

15

A Yes.

16

Q Was there anything else that went

17

into determining whether or not you would work

18

with IAM, apart from that agreement?

19

MR. SEAR: Objection to the form.

20

A Was there anything else that

21

determined --

22

Q Did you have anything in addition

23

to that agreement, any additional agreements

24

with IAM?

25

A I had no additional written

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agreements.

3

Q Before you entered into that

4

agreement, did you talk to anyone about the

5

prospect of working for IAM?

6

MR. SEAR: Objection to the form.

7

You mean besides --

8

MR. LANZA: Look, it is a broad

9

question. He can answer however.

10

A I talked to George Szele and

11

that's it.

12

Q You only spoke to George Szele?

13

A As far as I know, I only spoke to

14

George Szele.

15

Q You testified before that George

16

Szele indicated that he would raise two

17

hundred million dollars based on your track

18

record; is that correct?

19

A Correct.

20

Q What other sorts of things did you

21

and George discuss prior to signing the

22

agreement?

23

A Well, we discussed my prior track

24

record.

25

Q Anything else?

1

ZANGER

18

2

A We discussed that he was employed
3 by Goldman Sachs, he told me.

4

Q Did you discuss anything else
5 about George Szele's background?

6

A That he was an employee of Goldman
7 Sachs, a trader for Goldman Sachs, that
8 basically he had proprietary-type of trading
9 stuff, propriety-type of trading at Goldman
10 Sachs and specifically about his record you
11 are referring to?

12

Q Sure. That is what I am talking
13 about, his background.

14

A His background is basically as a
15 trader, he worked at Goldman Sachs. That's
16 how I remembered it.

17

Q Before signing the agreement, did
18 you discuss any of the provisions of the
19 agreement?

20

MR. SEAR: Objection to the form.

21

You may answer.

22

A We went over a number of the
23 sections.

24

Q Do you remember the substance of
25 those discussions?

1

ZANGER

19

2

A The discussions were that I would

3

get 25 -- of the 20 percent profits, I would

4

get 15 percent and he would get 5 percent,

5

that we would split the management fees

6

equally. Basically, he told me that I could

7

get out virtually at any time and he

8

reiterated that I could get out at any time if

9

things weren't working out and that was his

10

inducement for me to sign.

11

Q Was this memorialized in any way?

12

A What do you mean by

13

"memorialized"?

14

Q Was this written down in any way,

15

by e-mail or --

16

MR. SEAR: Objection to the form.

17

A I have no recollection that it was

18

done by e-mail.

19

Q Did you communicate with George by

20

e-mail?

21

MR. SEAR: Objection to the form.

22

A There have been e-mails.

23

Q How about instant messenger?

24

A Yes. There have been instant

25

messengers.

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Q You read the agreement before

3

signing it?

4

A Yes.

5

Q When was the last time that you

6

read the agreement?

7

MR. SEAR: I don't think it is

8

fair to go into what we did in terms of

9

discussions preparing the witness for

10

his testimony.

11

MR. LANZA: I will withdraw my

12

question.

13

Q Without going into any prep that

14

you had done with your attorney, when was the

15

last time that you read the agreement?

16

A I can't give an exact date.

17

Q Did you read the agreement after

18

you signed it?

19

A I can't recall that I did.

20

Q How would you characterize your

21

knowledge of your contractual obligations

22

under the agreement?

23

MR. SEAR: Objection to the form.

24

A That is fairly general.

25

Q You mean that you characterize

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your knowledge as fairly general?

3

A General.

4

Q So, as best that you can recall,

5

what were your obligations under the

6

agreement?

7

MR. SEAR: I object. Answer it as

8

best that you can.

9

A I was to trade the account.

10

Q And what was Independent Asset

11

Management required to do under the agreement?

12

MR. SEAR: The same objection.

13

Answer it.

14

A Well, as I remember it now, in

15

general, it was just basically to raise cash.

16

Q How long was the agreement for?

17

A There were various provisions in

18

there.

19

Q You indicated that under the

20

agreement, you were to trade the account; is

21

that correct?

22

A Uh-huh.

23

Q Based on your recollection under

24

the agreement, how many days, weeks, months or

25

years were you to trade the account?

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A Again, I think that there are

3

various provisions in there, but there's an

4

overall clause for five years.

5

Q What were the bases for

6

terminating the agreement?

7

A At this time?

8

Q In the agreement itself, from what

9

you can recall, was there a basis for

10

terminating the agreement outlined in the

11

agreement?

12

A There appears so, yes.

13

Q What were those bases?

14

A Well, I can't recall.

15

MR. LANZA: I'm going to show you

16

a copy of the agreement. Let's have

17

this marked as IAM's Exhibit 2.

18

(Whereupon, a document was marked

19

as IAM's Exhibit 2 for identification as

20

of this date by the Reporter.)

21

Q Dan, take a look at that

22

(handing). Do you recognize what I just

23

handed you, what is marked as IAM's Exhibit 2?

24

A What was the question? Just that

25

I have read it?

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MR. LANZA: Can you read back the

3

question?

4

(Whereupon, the referred to

5

question was read back by the Reporter.)

6

THE WITNESS: Yes.

7

Q What do you recognize that to be?

8

A An agreement.

9

Q Specifically, what agreement?

10

A An agreement between Dan Zanger

11

and Independent Asset Management.

12

Q When was that agreement signed?

13

A Well, the date says, "10/20/04."

14

Q So is it fair to say that you were

15

required to adhere to the agreement as of

16

October 20, 2004?

17

MR. SEAR: Objection to the form.

18

A It is fair.

19

Q Let's look at the second page of

20

the agreement. Let's look at point four at

21

the bottom of the page. Do you see that?

22

A Uh-huh.

23

Q Do you see that first sentence

24

there that begins with "it is understood"?

25

A Okay.

1

ZANGER

24

2

Q Can you read that out loud?

3

A "It is understood by all parties

4

that DZ will be the sole manager in assets it

5

has brought in for Class Z and IAM has no

6

intention to replace or terminate DZ from the

7

management of Class Z shares so long as DZ

8

remains within the guidelines outlined herein

9

and is not in breach."

10

Q In your own words, can you explain

11

what that means?

12

MR. SEAR: Objection to the form.

13

A It says that "DZ will be the sole

14

manager."

15

Q The sole manager of what, to be

16

clear?

17

A On assets that DZ has brought in.

18

Q Can you explain what that means,

19

assets that DZ has brought in?

20

MR. SEAR: Objection to the form.

21

A To me, it means cash.

22

Q Can you read the next sentence?

23

A "If for some reason IAM needs to

24

terminate this agreement and/or DZ as manager,

25

DZ is free to redeem or remove all capital it

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ZANGER

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has raised or brought into Class Z shares for
3 the purpose of DZ's management program within
4 the terms and guidelines of this agreement."

5

Q What does that mean?

6

MR. SEAR: I object. You can

7

answer.

8

Q In your own words, can you explain

9

what that sentence means?

10

A Well, it says here "if for some

11

reason IAM needs to terminate this agreement

12

and/or DZ as manager, DZ is free to redeem or

13

remove all capital it has raised or brought

14

into Class Z for purpose of DZ's management

15

program."

16

Q There are two words there. One

17

word is "raised" and the other word is

18

"brought."

19

A Correct.

20

Q Can you explain what those words

21

mean in this context?

22

A Well, it is kind of confusing.

23

Well, it makes it confusing instead of he.

24

Q Just to be clear, what you are

25

saying is what is confusing is that the

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ZANGER

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pronoun "it" is there as opposed to the terms

3

"raised" or "brought"; is that correct?

4

MR. SEAR: Objection to the form.

5

A Yes. It troubles me. It just --

6

Q Is it safe to say, you really

7

can't explain what that sentence means?

8

MR. SEAR: Objection to the form.

9

A I will leave it up to my attorney

10

to fully explain it.

11

Q How about the third sentence? Do

12

you want to take a look at the third sentence,

13

which begins with "IAM acknowledges"?

14

A "IAM acknowledges that DZ has

15

control of redeeming from or remaining in IFL,

16

the assets it has placed or raised into

17

Class Z under the terms and guidelines of this

18

agreement."

19

Q Do you see that there are terms

20

"placed" or "raised" there? Can you explain

21

what those words mean in this context?

22

A Well, it still bothers me. I

23

think it should be something else, but it is

24

what it is and it says, "IAM acknowledges that

25

DZ has control of redeeming or remaining in

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ZANGER

27

2

IFL, the assets it has placed."

3

Q So let me just sort of ask you a

4

specific question: You put in, approximately,

5

five million dollars at the inception of this

6

agreement, correct, or sometime not too long

7

after you signed the agreement; is that

8

correct?

9

A Yes.

10

Q Do you read that this last

11

sentence, do you understand that to mean that

12

you could have removed that five million

13

dollars at any period of time?

14

A Well, the sentence kind of implies

15

that I can redeem or remove it at any time

16

that I have complete control over my own

17

assets.

18

Q How about without just referring

19

to the sentence per se? Is it your

20

understanding that according to this

21

agreement, the agreement that you had with

22

IAM, you could have removed that five million

23

dollars at any period of time?

24

MR. SEAR: Objection to the form.

25

Answer it as best that you can.

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ZANGER

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2

A Can you repeat the question?

3

MR. LANZA: Read it back.

4

(Whereupon, the referred to

5

question was read back by the Reporter.)

6

THE WITNESS: Without referring to

7

this agreement or this sentence?

8

Q No. Just to be clear, I was

9

asking you questions based on your

10

interpretation of this sentence before. I am

11

not referring to that sentence per se anymore.

12

I am just saying in this agreement that you

13

signed with IAM, according to this agreement,

14

could you remove that five million dollars at

15

any time?

16

A It is my understanding that yes.

17

Q So hypothetically, you could have

18

redeemed your shares as early as July of 2005?

19

A Hypothetically, yes.

20

Q Even May of 2005?

21

A Yes.

22

Q You could have removed that five

23

million dollars an hour after you put it in;

24

is that correct?

25

A Well, not only did I kind of get

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ZANGER

29

2

that inference from the agreement, George

3

specifically told me that I was free to take

4

my money out at any time.

5

Q

Did you have an obligation to even

6

put any money in?

7

MR. SEAR: Objection to the form.

8

A

Well, I believe that I did have an

9

obligation to put the money in.

10

Q

So the way that you understood the

11

agreement, to be clear, you had an obligation

12

to put the money in, but you could have taken

13

it out immediately thereafter?

14

A

Well, I never had any concepts to

15

take it out at all for any period of time. I

16

did intend to take it out once the fund got

17

going.

18

Q

Just to be clear, I wasn't asking

19

about your intention. I was asking about what

20

you understand the agreement to be. You

21

indicated before that this agreement obligated

22

you to put five million dollars in; is that

23

correct?

24

A

Yes.

25

Q

You also indicated that that

1

ZANGER

30

2

agreement didn't obligate for you to have that
3 money in for any specific period of time?

4

A Yes.

5

Q So according to your understanding

6

of the agreement, the agreement effectively

7

says that you can put five million dollars in

8

say on a Monday morning at 9:00 and remove it

9

at 9:15 that same day?

10

MR. SEAR: Objection. Answer it.

11

A I am basically under the

12

understanding that I had the freedom to do

13

that.

14

Q Alright. I want to sort of direct

15

your attention to point seven. You don't have

16

to read it out loud, but I kind of ask you to

17

just read that.

18

A Okay.

19

Q That paragraph discusses a term of

20

the agreement; is that correct?

21

A It says, "The term of this

22

agreement."

23

Q It says that the term of the

24

agreement is five years; is that correct?

25

A Yes.

1

ZANGER

31

2

Q What is the term referring to?

3

MR. SEAR: Objection to the form.

4

A Five years is referring to this

5

agreement.

6

Q Can you point to any other part of

7

that agreement that indicates a different term

8

of the agreement?

9

MR. SEAR: Objection to the form.

10

A I'm not an attorney.

11

Q So I will take that as a no at

12

this time?

13

A I wouldn't say that. I just said

14

that I'm not an attorney. I am reading the

15

thing because you are asking me does it state

16

any other points. I don't have the agreement

17

memorized, but there are a number of areas

18

here.

19

Q Do you want to take some time to

20

point that out?

21

A No. Again, I am not an attorney,

22

but it appears that there are a number of

23

areas.

24

Q I will move on. Let's turn to

25

page 2. Do you see paragraph 1 on page 2?

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ZANGER

32

2

A Yes.

3

Q Do you see where it says,

4

"Leverage" under subheading A? It says,

5

"Leverage will be limited to four to one

6

initially"?

7

A Yes.

8

Q Can you explain what leverage is?

9

A Leverage is leverage, borrowing

10

money and using that to finance your -- your

11

wherewithal.

12

Q So what does it mean when that

13

says, "Leverage four to one"?

14

A You will have four times your cash

15

value.

16

Q So explain what that means, just

17

to be clear.

18

A It means if you have \$100, you can

19

borrow \$400.

20

Q And you have subheading B under

21

that. You have the term "liquidity is

22

important under any market condition." Do you

23

see that?

24

A Yes.

25

Q Can you explain what liquidity

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ZANGER

33

2 means?

3 A Well, it is the ability to move
4 products around quickly.

5 Q Can you elaborate on that? I'm
6 not clear on what you mean by that.

7 A It means the ability to be able to
8 sell something quickly. It is a form of
9 quickly, you know. It is up for
10 interpretation, but --

11 MR. SEAR: Off the record.

12 (Whereupon, an informal discussion
13 was held off the record.)

14 Q Can you explain to us -- there is
15 a point C and the term "redemptions." Can you
16 explain that?

17 A It says, "If any amounts are
18 redeemed within one year, two percent of such
19 amount shall be forfeited," which goes back to
20 your prior question.

21 Q How about point D, "full
22 disclosure of positions will be necessary at
23 all times." Can you explain what that means?

24 A Well, full disclosure of positions
25 will be necessary at all times. That means

1

ZANGER

34

2

the disclosure of your positions will be

3

necessary at all times, that basically anybody

4

will be able to see your positions, as

5

necessary, at all times.

6

Q How are positions disclosed,

7

generally?

8

A Well, um, there's -- you can log

9

into the system and see your positions.

10

Q You mean the computer system that

11

you can log in?

12

A Yes.

13

Q What is the name of that system

14

that you use?

15

A The one that we were using was

16

Redi, R-E-D-I.

17

Q Now, point E, it says, "DZ shall

18

remain in full compliance at all times with

19

prime broker's limits, rules or guidelines."

20

Can you explain what that means in layman's

21

terms?

22

A Well, it means that I will be in

23

full compliance at all times with trying to be

24

within broker's limits, rules and guidelines.

25

Q That is essentially what I just

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ZANGER

35

2

read. Can you sort of elaborate on that?

3

A It pretty much means what it says.

4

Q So I will take that as sort of no,

5

that you don't have anything to add to that?

6

A Correct.

7

Q How about point F? Do you see it

8

says that "DZ must remain transparent and

9

compliant on all levels at all times to IFL

10

and IAM." Can you in layman's terms explain

11

what it means to be transparent and compliant

12

in this context?

13

A Again, the positions must be able

14

to be seen and that you must be compliant with

15

guidelines.

16

Q With guidelines? Where are you

17

getting the term "guidelines" from?

18

A Well, I am getting it from the

19

English library, basically.

20

Q Understood, but I mean, is the

21

term "guidelines" used in that sentence that

22

we just looked at?

23

A In that sentence that we just

24

looked at, it is not.

25

Q But you understand that the term

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1

ZANGER

36

2

"compliant" means compliant with guidelines;

3

is that correct?

4

A Yes.

5

Q Is it broader than guidelines?

6

MR. SEAR: Objection to the form.

7

A Well, I can't interpret that.

8

Q Let me ask you, let me give you a

9

specific situation and you can tell me about

10

subsection F, how it would apply. Let's say

11

IAM requested you to sell a position at a

12

specific period of time. Would you be

13

required to under subsection F?

14

A If IAM asked me to sell a

15

position, would I be required to?

16

Q That's correct.

17

A No.

18

Q Take a look at the next sentence.

19

It says something about draw downs below

20

20 percent. Do you see that?

21

A Yes.

22

Q Can you explain what a draw down

23

is?

24

A Well, draw down is referring to a

25

high water mark.

1

ZANGER

37

2

Q Explain what is a high water mark.

3

A A high water mark is the absolute

4

high point that a fund reaches at any one

5

given time.

6

Q What is a draw down in relation to

7

a high water mark?

8

A Well, any amount below the high

9

water mark is called a draw down.

10

Q So, effectively, what this is

11

saying is if you go below 20 percent of the

12

high water mark, that agreement may be

13

terminated; is that correct?

14

A That's what it says here.

15

Q There is also reference in this

16

agreement to your trading methodology?

17

A Okay.

18

Q Let me find it. It says it on

19

page 1, the last whereas, "whereas, it is

20

understood by IAM."

21

A Page 1?

22

Q Yes. Go to the first page, where

23

it has whereas. It says, "DZ's trading

24

methodology." Just to be clear, DZ is you

25

here; is that correct?

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ZANGER

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2

A Yes.

3

Q So it talks about trading, your

4

trading methodology or your methodology. Can

5

you explain what that is?

6

A Do you want me to explain what my

7

trading methodology is?

8

Q In sum and substance. You don't

9

have to go in detail, I mean?

10

A It is my acquired way of trading.

11

Q But --

12

A You want the exact methodology,

13

you know?

14

Q Is there a term for it?

15

A Yes. Basically, I trade off

16

momentum. I am highly dependent on momentum.

17

Q What does that mean?

18

A I am very dependent on leverage.

19

Q Let me ask that. What does it

20

mean to be dependent on momentum?

21

A That is the velocity and change

22

and rate of change of stocks.

23

Q You are dependent on stocks moving

24

a particular way; is that correct?

25

A Yes.

1

ZANGER

39

2

Q You say leverage is important; is that correct?

4

A My style.

5

Q And why is that?

6

A Well, because it is my style.

7

Q I will move on. It says some points, it says a couple of points in that same paragraph that I was referring to just a moment ago. It says, "It is understood by IAM that DZ -- it is understood by IAM that DZ wishes to arrange for the investment and transfer of USD five million and up to fifty million into an existing vehicle"; is that correct. It says that there?

16

A Yes, that's correct. It says that there, that's correct.

18

Q If you look on page 2 and you look at paragraph 1, the third line, it is still the first sentence, I believe, but the third line of paragraph 1, it also says, "USD five million up to fifty million"; is that correct?

23

A It says it here.

24

Q So just to be clear, did you

25

suggest -- I will withdraw that question.

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1

ZANGER

40

2

Did you agree to put five million

3

dollars or fifty million dollars in there?

4

A I agreed to put five million

5

dollars in.

6

Q Then why does it say up to fifty

7

million dollars?

8

A Well, my interpretation is that it

9

gives me the option to add more if I so

10

choose.

11

Q Did you ever discuss prior to

12

signing this agreement with anyone an

13

intention of putting more than five million

14

dollars in there?

15

A Not that I can recall.

16

Q You never did?

17

A That's not what I said. I said

18

that I don't recall that.

19

Q So you don't know how the terms

20

and up to fifty million dollars got in there?

21

A Well, George wrote it in there.

22

That's how it got in there.

23

Q How do you know that George wrote

24

it in there?

25

A I would assume that George or his

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ZANGER

41

2

representative wrote it in there.

3

Q You just testified a moment ago

4

that you don't recall why it would be George

5

that put it in there as opposed to you.

6

A I didn't write the agreement.

7

George wrote the agreement.

8

Q Didn't you modify the agreement?

9

A I never modified the agreement,

10

none whatsoever.

11

Q You never made any modifications

12

on the agreement?

13

A I don't recall ever making a

14

modification on the agreement.

15

MR. LANZA: Let's move on. I'm

16

going to show you the prime broker's

17

agreement here. Let's have this marked

18

as IAM's Exhibit 3.

19

(Whereupon, a document was marked

20

as IAM's Exhibit 3 for identification as

21

of this date by the Reporter.)

22

Q Mr. Zanger, why don't you take a

23

look at that (handing)?

24

A Do you want me to read the whole

25

thing?

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1

ZANGER

42

2

3

4

Q Just sort of take a look at it and then I will ask you a question about it in a moment.

5

MR. SEAR: Off the record.

6

7

(Whereupon, an informal discussion was held off the record.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Mr. Zanger, have you had a chance to look at IAM's Exhibit 3, what I just handed you?

A Okay. I browsed briefly through the pages, but I didn't read them thoroughly.

1

ZANGER

43

2

Q

Have you seen this document

3

before?

4

A

I can't recall ever seeing it

5

before.

6

MR. SEAR: Objection to the form.

7

Q

Let's turn to the third page of

8

that document. It is bates stamped 000007.

9

Do you see that?

10

A

Yes.

11

Q

Is that your name up on the top,

12

Daniel Zanger?

13

A

Yes.

14

Q

I just want to be clear, you have

15

never seen this document before?

16

A

I cannot recall seeing this

17

document before.

18

MR. LANZA: Why don't we take a

19

five-minute break?

20

MR. SEAR: Okay.

21

(Whereupon, a short recess was

22

taken.)

23

BY MR. LANZA:

24

Q

Prior to the break, I handed you a

25

document marked as IAM's Exhibit 3; is that

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1

ZANGER

44

2

correct?

3

A Correct.

4

Q You said that you didn't recognize

5

the document, am I correct, that you did not

6

recognize the document?

7

A I don't recognize the document.

8

Q You have never seen this document

9

before?

10

A I don't recall seeing this

11

document before.

12

Q Were you aware that Goldman Sachs'

13

execution in clearing had an agreement with

14

Independent Funds Limited?

15

A The mere assumption. I can only

16

assume that he had one.

17

Q You assume that there was an

18

agreement, but you have never seen it?

19

MR. SEAR: Objection. He

20

testified three times on his

21

recollection.

22

Q We will move on. You knew that

23

Goldman Sachs' execution in clearing had rules

24

and regulations; is that correct?

25

A They had various rules and various

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1

ZANGER

45

2

regulations.

3

Q

Had you ever taken a look at them?

4

A

I don't recall ever taking a look

5

at them.

6

Q

Specifically, were you aware of

7

their regulations with regards to margins?

8

A

Again, they have various

9

regulations, rules and they seem to float.

10

Q

What do you mean by that?

11

A

Well, they just seem to be

12

modified periodically.

13

Q

Okay. How do you know that they

14

are modified periodically?

15

A

Well, at times, I have been able

16

to go out beyond two to one on margin and they

17

never said anything.

18

Q

But you have never been aware of

19

their specific rules; is that correct?

20

MR. SEAR: Objection to the form.

21

A

I am not aware of their specific

22

rules insofar as the way that you are stating

23

it.

24

Q

Is it safe to say that you

25

concluded that their rules changed because

1

ZANGER

46

2

sometimes they didn't object to things that
3 you did?

4

A Yes.

5

Q Let's sort of turn to the

6

agreement itself again, which, I believe, was

7

Exhibit 2. I am just going to ask you, in

8

general, would you say that you complied with

9

all U.S., federal and state and local laws

10

when you were trading on behalf of IFL, the

11

Independent Funds Limited?

12

MR. SEAR: Objection to the form,

13

but answer as best that you can.

14

THE WITNESS: Can you repeat the

15

question?

16

(Whereupon, the referred to

17

question was read back by the Reporter.)

18

THE WITNESS: To the best of my

19

ability.

20

Q What does it mean to comply with

21

U.S., federal, state and local laws while

22

trading?

23

A Pretty much exactly what you said.

24

Q I am confused. I just asked if

25

you obeyed all U.S., federal, state and local

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ZANGER

47

2

laws. My question was, specifically, what
3 does that mean to obey those laws?

4

MR. SEAR: He just answered it.

5

A To obey them.

6

Q So just to be clear, your answer

7

is to obey laws means to obey laws; correct?

8

A Well, pretty much.

9

Q How about the applicable rules and

10

regulations of Bermuda? Did you comply with

11

them while trading?

12

A To my recollection, to the best of

13

my ability, I did.

14

Q Are you aware of what those laws

15

are?

16

A Well, I have never seen the laws

17

that I can recall.

18

Q Do you work with a compliance

19

officer?

20

MR. SEAR: Objection to the form.

21

Q When you were trading with IFL,

22

did you have a compliance officer?

23

A A Bermuda compliance officer?

24

Q Any compliance officer.

25

MR. SEAR: We are talking about

1

ZANGER

48

2

Dan personally?

3

MR. LANZA: Yes.

4

A I don't recall. I don't recall.

5

Q How about your other fund? Is

6

there a compliance officer there at Westwood

7

Partners?

8

A I don't recall a compliance

9

officer.

10

Q Did you comply with the CFTC and

11

NFA regulations?

12

MR. SEAR: Objection to the form.

13

Answer it as best that you can.

14

A I can't say that I'm aware of

15

those regulations.

16

Q My question was whether or not you

17

complied with the regulations.

18

A Well, if I am not aware of them,

19

it would be hard to say that I complied with

20

them.

21

Q Well, you did say that you

22

complied with the United States, federal,

23

state and local laws just a moment ago; is

24

that correct?

25

A My interpretation is different

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1

ZANGER

49

2

than what the other question is.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q I will move on. Did you comply with all of the rules or regulations on any exchanges that you traded on while you were carrying out your duties under the agreement?

A Yes, to the best of my ability, I did.

Q Let's take another look at the agreement. Let's look at page 2. Under subsection A, which we just spoke about not too long ago, "leverage shall be limited to four to one initially, but promptly modified as performance results are monitored," do you see that?

A I see that.

Q While you were trading for IFL, was leverage limited to four to one?

MR. SEAR: You mean under this agreement?

MR. LANZA: Under this agreement, while you were trading under this agreement.

A Initially.

Q At a point where it went beyond